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American Whitewater's Comments on the Chattooga River User Capacity Analysis.

Submitted on August 2nd, 2006

American Whitewater was told by Jerome Thomas at the July 27th, 2006 meeting regarding the Chattooga River User Capacity Analysis (UCA) that we were welcome to submit comments on the study design, however the design is final and our comments will not be incorporated. Still, the current design of the UCA will not yield the intended result and is irresponsibly unsafe, and we feel we must file comments. The USFS appears intent to deviate from standard methods and safety protocol and has thus doomed at least portions of the UCA to failure. We have accepted that the USFS will carry out the UCA with an illegal study design unless the courts intervene, however we cannot accept a study design that is unscientific, unlikely to work, and unsafe. Therefore we offer these comments with the hope that reason will prevail, and the study design will be improved.

We would like to remind you that you define collaboration as “just another way to describe the two-way communication that is our public involvement process⁵⁷.” Yet, your agenda⁵⁸ for the only meeting held to “discuss” the UCA study plan clearly stated in bold font: “The intent of the meeting is for the Forest Service to share information with the public on the data collection process. This meeting will not be a hearing or formal comment session.” There has been and will be no opportunity to offer comments on the study design. Thus, there has been no two-way communication and no collaboration on the study design. You have not granted our resource professionals the opportunity to work with you or even comment on the study design during its preparation and as a result the product of your efforts does not meet our interests in a fair, scientifically rigorous, and workable study. While you may have “involved interested parties” per the Appeal ROD, you have certainly not created a collaborative process.

As a general comment, we disagree with the statement made by Roberta Willis at the meeting that the goal of the UCA is to collect information for making a decision, and is not a long-term research project. User capacity analyses are in their very essence designed to be replicable at regular intervals for long term management direction – in short: a long term research project. We still have never heard the USFS state the research question being asked of the UCA – and this is a critical missing point of information. If the USFS is simply studying whether or not to allow boating – without addressing the full suite of recreational uses of the corridor – then the study is inherently

⁵⁷ From the FAQ's recently published on the SNF Chattooga webpage:
<http://www.fs.fed.us/r8/fms/forest/projects/faq.shtml>

⁵⁸ Agenda is at: <http://www.fs.fed.us/r8/fms/forest/projects/AgendaJuly27.pdf>

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biased and unsupportable. We request clarification of what questions and hypotheses the USFS will be using the UCA to analyze.

In addition we request an actual study plan for review. All we have to base our assessment on is a few presentations and meeting hand-outs. We request that the USFS make available a comprehensive study plan complete with objectives, methods, and research questions. We feel that a million-dollar analysis should have a publicly available study plan, so that at least the public can gage success of the work. We should note that we proposed a more affordable, robust, and timely study plan in May of 2005, less than 2 weeks following the Record of Decision.

We hope that you remain open minded enough to change selected methods of the UCA so they do not fail abysmally from meeting your needs and ours. Please consider these ideas, we offer them to improve the study and reduce future administrative challenges and hurdles.

Expert Panels:

The current plan for using expert panels will not work and will expose paddlers to unacceptable risks. An on-water study has never been carried out with the methods the USFS has selected, for several very good reasons. While we are certain the consultants have explained this and were disregarded, we feel we must object with the hope that the USFS will change the study design. In general, the USFS has is recklessly proposing to seriously alter paddlers' normal decision making process and offering incentives to take risks. The problems with the expert panels as designed are as follows:

- **Paddlers will be exploring uncharted Class V waters with strangers.** Paddlers are very particular about who they run difficult whitewater with, and typically have a core group of friends they pursue challenges with. These groups have unique communication skills using hand signals and other means, have practiced rescue techniques together, gage rapid difficulty by watching others with known skill levels, and most importantly have the level of personal care and trust essential for any backcountry challenge. Forcing people to tackle the Headwaters with strangers severely diminishes the safety of each individual, the group, and the UCA. It also significantly erodes the experience and perception of difficulty, risk, and enjoyment of the river corridor for paddlers. It is reckless, and significantly weakens the study by deviating from normal use patterns.
- **Paddlers will have only one or possibly up to three specific days to experience the headwaters.** All athletes and adventurers have good days and bad days regarding their physical, emotional, or mental fitness. On any given day individuals may be sick or recovering from an injury, or overexerted from previous activity, or may have slept poorly, or may have experienced a loss or emotional trauma, or intuition may tell the person not to paddle. The list goes on... However, if there is only one single day on which this person will be

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allowed to paddle the Chattooga headwaters *in their entire lives*, it is very likely that they will choose to paddle regardless of virtually any external factor. Forcing people to paddle the river on a single day, *or never again*, creates an artificially dangerous incentive for paddlers to choose to paddle when they might otherwise choose to not paddle. The USFS is recklessly creating this situation. A group of cooperative river managers accidentally created the same incentive by instituting a system of difficult to obtain permits on the Tallulah River, and subsequently lifted the permits for this very reason.

Furthermore, artificially deviating from likely preferred use patterns significantly weakens the study.

- **Paddlers will not have their choice of flow conditions.** Some paddlers prefer higher flows, while others prefer lower flows, and most are especially particular about the flow conditions they prefer for an exploratory descent. In this case however the USFS will be selecting the flow which paddlers will have their one chance to experience the river. Once again the USFS has recklessly set up an incentive for paddlers to deviate from their normal decision making process – and to tackle the headwaters at conditions on which they may otherwise chose not to run the river.

In addition, it is very likely that each section of the headwaters will have different ranges of optimal, minimal, and safe flows. By forcing paddlers to tackle all sections at once, as is presumably the plan, paddlers will not be able to self-select preferred flows for each reach. While controlled flow studies offer specific flows; those flows are chosen by paddlers and it is highly likely that paddlers choosing not to paddle can return at a different flow or future date. Furthermore, artificially deviating from self-selected preferred flows significantly weakens the study.

- **Paddlers will have to run 21 consecutive miles of Class IV-V whitewater.** The average southeastern Class V run is roughly 3-5 miles long. By asking paddlers to run 21 miles of difficult and uncharted whitewater in a single day (*or potentially not run it at all for their entire lives*) creates an artificially dangerous situation. It encourages paddlers to accept the challenge and move fast – without adequate time to scout rapids – and also fosters physical and emotional exhaustion. There is no doubt that it can be safely done by some individuals, especially after routes are learned – but it is totally inappropriate as part of the study.

This is the longest flow study of a drop-pool river we are aware of, a fact made more onerous by the fact that the river is a total unknown. Furthermore, artificially deviating from likely preferred use patterns significantly weakens the study.

- **Paddlers, anglers, consultants, agency staff, and observers will have to travel to the river on a moment's notice.** Lets face it, the proposed plan is

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just not going to work. All headwater streams in the southeast are very flashy, particularly during times of leaf-out, low base flows, and drought. It will take a miracle to get all these people to the river at the same time when the flows are in an appropriate window, and once amassed there will be incredible pressure for paddlers to run the river regardless of weather, water, or personal conditions. This is further complicated by the very long length of the run(s), and the different preferred flow ranges for each reach. There has never been a study to our knowledge that has required a select group to mobilize so fast on a moment's notice, let alone such a diverse group. While pulling off one such trip will take a miracle, pulling off two or three will be virtually impossible. This method needs to be discarded.

- **Flow information will, by design, be inadequate for future management decisions.** The opinions of 5-8 individuals running (or fishing) a river under highly artificial conditions, one, two, or three times is an inadequate basis for decisions regarding the management of a Wild and Scenic River. Expert panels are acceptable for reconnaissance trips – but not in most cases for determining the full range of flow preferences. It is acceptable for these groups to document the resource with video and still images, map significant features, characterize reach difficulty and access needs, and to generally discuss flow preference ranges. This will be very helpful and indeed necessary information, but should not be substituted for a complete flow study.
- **Study elements are needlessly and erroneously being combined and truncated.** The study plan calls for boaters and anglers to analyze the same flows on the same days, which is completely unnecessary and counter productive. Both anglers and paddlers need to experience flows that are at least marginally too high and too low for their preferred experience in order to begin to draw flow preference curves. It is unreasonable to only study flows in the 2.0 2.5 foot range (or higher), since those flows present very different recreational conditions for paddlers and anglers. Both user groups need to experience a suite of flows in their own acceptable range and possibly beyond that range. Overlap is needed, but not 100% by design. Creating 100% overlap biases the study in well documented ways: If boaters and anglers both use one flow or the same flows only – they will likely enjoy it – since it is better than the alternative of not fishing or not boating. This design is radically flawed, biased, and totally unacceptable. We are aware of no other study designed this way – and for good reason.

Coupling the two groups on the same days is also totally irrelevant, since the expert panels cannot be – should not be – and are not - designed to address encounters between the two user groups. Coupling the study dates serves no purpose, and in fact distracts study participants from the true questions they are charged to answer.

- **Non-paddlers are shooting a paddling video.** The Chattooga River is not easily viewed or filmed from shore along its entire length. We have never

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experienced a reconnaissance video shot by land-based consultants that was affordable, aesthetic, comprehensive, or representative. Certainly in this case it would be impossible. Only a paddler with videography experience can capture the paddling experience on the Chattooga, and capture a comprehensive documentary on the rapids, portages, and scenery of the river. The USFS is wasting money by hiring anyone but a paddler with the appropriate skills to shoot and edit the video, and the USFS will not meet its goals. Only through hiring a paddler can we get this information in a timely and professional manner. We have specific recommendations on paddlers with professional videography experience, and have recommended them in the past – to no avail.

- **A reach has been erroneously eliminated from the analysis.** Congress did not eliminate the uppermost 1.7 miles of the Chattooga River from designation under the Wild and Scenic Rivers act, and the USFS therefore cannot arbitrarily eliminate it from study or management for the Chattooga River's designation values. The USFS claims that they will not study this reach – but will then recommend management alternatives regarding the reach. On what will these alternatives be based, given the near complete lack of knowledge of that resource? How will they endure scrutiny?

In the Frequently Asked Questions pages recent published on the SNF website the USFS states that navigability is beyond the scope of the UCA and too complicated to deal with at this juncture. The reviewing officer of our appeal did not grant the SNF the latitude to throw 1.7 miles of the Chattooga River out of the UCA – and it is impermissible for them to do so. We would remind the SNF that navigability is completely irrelevant in this case – and that they have an obligation under the Wild and Scenic Rivers Act to manage – and thus study – this reach. Importantly the SNF has every right to do so, and indeed in this case *must act*.

[PHOTO]

Above Photo: Misleading sign welcoming the American Public to their Wild and Scenic Chattooga River at it beginning at Grimshawes Bridge.

[PHOTO]

Above Photo: Sign strung over the Wild and Scenic Chattooga River.

Recently new signs have been placed at Grimshawes Bridge that indicate all public recreational use is being prohibited by the private land-owners (some signs have existed for several years). By allowing this to occur, the USFS is in violation of the WSRA, which charges the USFS to protect and enhance

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recreation throughout the WSR corridor. The WSRA is very clear that the USFS has the tools at its disposal to remedy this egregious disregard for congressional intent and the public trust. Section 6(b) of the WSRA reads:

“If 50 per centum or more of the entire acreage outside the ordinary high water mark on both sides of the river within a federally administered wild, scenic or recreational river area is owned in fee title by the United States, by the State or States within which it lies, or by political subdivisions of those States, neither Secretary shall acquire fee title to any lands by condemnation under authority of this Act. Nothing contained in this section, however, shall preclude the use of condemnation when necessary to clear title or to acquire scenic easements or such other easements as are reasonably necessary to give the public access to the river and to permit its members to traverse the length of the area or of selected segments thereof.”

Forest Service policy closely follows the WSRA. Section 2354.51a of the Forest Service Manual states: “Condemnation may be used to clear title or acquire scenic easements or other such easements deemed reasonably necessary to provide public access to the river and to permit the public to traverse the length of the river or selected segments.”

It further clarifies in Section 2354.51: “Work with private landowners to minimize incompatible use and to prevent other potential problems.” In the same section it states that these actions may include “Acquiring key private land in fee title or partial interests. Acquire lands and interests in lands only to the extent necessary to protect, maintain, and/or enhance the river area and the established recreation objectives.”

The USFS’s mandate is clear. They must manage the entire Chattooga WSR for the public benefit, and specifically for the values that lead to designation. These values are being totally eviscerated on 1.7 miles of the Chattooga River. The USFS must work with the owners of this land to resolve this issue. If a mutually agreeable solution cannot be reached, the USFS has an obligation to condemn at least, a recreational easement along the Chattooga River to support floating, fishing, swimming, and other recreational pursuits.

A proposal for a safer and more scientifically rigorous study plan:

This study plan is illegal⁵⁹, but is vastly safer and more scientifically rigorous than the “final” plan decided upon by the USFS. Because we are certain that the USFS is unwilling to adopt a legal study plan that meets our interests, we ask the USFS to adopt this plan for the Expert Panels which will at least result in gathering of relevant data.

⁵⁹ It is illegal because any study plan that does not allow unlimited paddling is in violation of a number of federal laws and regulations.

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1. Permits will be issued to as many individuals as the SNF is willing to accept, which contain the following provisions:

- Permit holders may run each section of the headwaters of the Chattooga up to 3 times, and must report each run to the SNF.
- Permit holders may paddle the Headwaters of the Chattooga on any day within the study period, which begins with the date of permit issuance and expires on February 28th, 2007. This period may be extended as needed.
- Up to 4 paddlers may accompany permit holders on each run of each section. These paddlers must fill out a sub-permit given to them by the permit holder.
- Each permit holder and sub-permit holder must complete their post-run assessment form as a condition of their permits. These assessment forms will be filled out and mailed to the SNF. Permit and sub-permit holders must be willing to participate in phone interviews as a condition of their permit.
- Permit holders are encouraged – but not required – to select a range of flows.
- Permit holders are encouraged – but not required – to fulfill the maximum number of runs allowable under their permit.
- Permit holders receive a package of information regarding the river.
- Permits are non-transferable.

2. One additional permit will be issued to a paddler with suitable experience that is hired by the SNF to film and edit a video documentary of paddling the Upper Chattooga River.

3. Floating access through the private lands along the Headwaters of the Chattooga River should be negotiated by the USFS for the time period of the study, and/or a recreational easement should be acquired promptly for perpetuity.

4. We recommend that the angling expert panels are operated in a very similar manner – with the acknowledgement that permits are not required for angling at this time.

Discussion:

Our recommended study plan fosters safe backcountry decision-making through eliminating incentives to attempt the river during sub-optimal personal or environmental conditions. It creates a safer study by allowing paddlers to select their group, their water levels, the days on which they paddle the river, and the sections they choose to paddle. It eliminates many of the divergences from normal paddling behavior, which allows the study to capture a more realistic analysis of the resource. It more closely follows accepted scientific methodologies and concepts. It eliminates bias caused by angling and boating flows that overlap 100%. It will capture data on a wider range of flows. It addresses the entire headwaters rather than an arbitrarily truncated portion. It eliminates the notoriously bad practice of hiring land-based consultants to attempt to film the paddling experience through dense rhododendron in favor of more accepted and favorable option of hiring a paddler to fill this role. It will save massive resources by not requiring last minute travel by consultants and agency staff, not to mention future successful challenges to a faulty record. It will actually result in a completed study with data in hand – without requiring any miracles. It will uncouple the unrelated angling and

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paddling expert panel analysis in the UCA. In short, it is a better study: it is cheaper, safer, more scientifically rigorous, and will yield vastly better results.

Literature Review:

We fully support the USFS conducting a literature review regarding User Capacity Analyses and other relevant topics. We have already contributed considerably to the record through our appeal, and will likely contribute further. One study of note is the 2003 study titled “Use and Economic Importance of the Chattooga River⁶⁰” which was published by American Rivers and the National Park Service. This study probed many of the specific issues that stakeholders have brought up regarding on the upper river, and have tested them on the lower river. Thus, it is a treasure trove for this analysis. One example is how seeing paddlers impacted non-paddling visitors’ experience. The study reports the following:

“A number of questions probed how various issues might be affecting users’ experiences for better or worse. The first related to boaters’ interactions with others on the river. Most users saw 5 or fewer people kayaking the river during their visit. The average number of kayakers seen was 7 (table 20). Most users reported that seeing kayakers that day had no effect on their enjoyment. On average seeing kayakers increased user’s enjoyment slightly overall. Only 6% of users reported that seeing kayakers had somehow decreased their enjoyment that day (Table 21). When asked in an open-ended format *how* the kayakers had affected their enjoyment, the vast majority of comments were positive. The most common responses were that kayakers were fun and interesting to watch and that it was enjoyable to see their skill (Table 22).”

The USFS also requested information on proxy, or similar rivers to study. There are multiple rivers in the region that share some but not all of the Upper Chattooga’s characteristics as a paddling resource. We provided detailed analyses of these resources during the preparation of the DEIS. In general there are very few other whitewater rivers in the region that are 1) Wild and Scenic, 2) Wilderness, 3) as long as the Chattooga’s runs (5, 10, 21, 50+ miles), 4) that have good water quality, 5) are protected, 6) are not roadside, or 7) have similar ecological, scenic, geologic, and geomorphological characteristics. More importantly, no other river flows through the incomparable valley of the Chattooga, and no other river offers the same unique rapids. The Chattooga is a unique paddling experience. Our comments on the list developed by the USFS is in Appendix 1. We have not commented on the river’s “importance” because the concept is highly personal and totally moot.

From a management of floating perspective the Upper Chattooga should be no different from scores of other regional USFS managed headwater streams, including several that flow through Wilderness and at least one designated as a WSR. However, from the individual paddler’s perspective (and certainly the same is true for anglers and hikers) – the Chattooga is unique.

⁶⁰ http://www.americanrivers.org/site/DocServer/final_report_chattooga.pdf?docID=532